

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
VEANKA MCKENZIE,	:
	:
Plaintiff,	:
	:
- against -	:
	:
KUMIKI GIBSON, individually, the	:
STATE OF NEW YORK, and the NEW	:
YORK STATE DIVISION OF HUMAN	:
RIGHTS,	:
	:
Defendants.	:
-----X	

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO STRIKE**

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**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO STRIKE**

Preliminary Statement

Defendants the State of New York, the New York State Division of Human Rights ("Division"), and Kumiki Gibson, the former Commissioner of the Division, respectfully submit this memorandum of law in support of their motion to strike five affidavits or affirmations improperly submitted by plaintiff in opposition to defendants' motion to dismiss.

ARGUMENT

**THE AFFIDAVITS IMPROPERLY SUBMITTED ON THIS
MOTION TO DISMISS SHOULD BE STRUCK**

Plaintiff improperly submitted five affidavits or affirmations in opposition to this motion, which do nothing but attempt to provide evidence in support of the allegations of the Second Amended Complaint. On a motion to dismiss, the court may not rely on matters outside the pleadings. Accordingly, the court must exclude these materials. The only exception is where the court converts the motion to one for summary judgment, on notice to the parties. Friedl v. City of New York, 210 F.3d 79, 83-84 (2d Cir. 2000). While defendants submitted documents that were referenced in the complaint, properly considered on a motion to dismiss, plaintiff's affidavits plainly go beyond the complaint. The affidavits or affirmations of Arlyne Zwyer, Anton Antomattei, Christopher Knauth, Denise Ellison and Wyletta Barbee should therefore be struck.

CONCLUSION

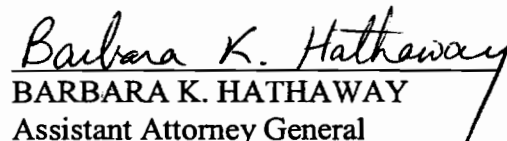
**FOR THE FOREGOING REASONS, THE AFFIDAVITS
SUBMITTED BY PLAINTIFF SHOULD BE STRUCK.**

**Dated: New York, New York
June 20, 2008**

Respectfully submitted,

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By:


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